
UTAH LABOR COMMISSION

JOHN ROGERS,

Petitioner,

vs.

**ASSOCIATED PIPELINE
CONTRACTOR and LIBERTY
MUTUAL,**

Respondents.

**ORDER ON
RECONSIDERATION**

Case No. 05-0766

John Rogers and Associated Pipeline Contractor and its insurance carrier, Liberty Mutual, (hereafter referred to as “Associated Pipeline”) ask the Utah Labor Commission reconsider its prior decision affirming John Rogers’ claim for permanent total disability benefits under the Utah Workers’ Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this matter pursuant to Utah Code Annotated § 63G-4-302.

BACKGROUND AND ISSUES PRESENTED

Mr. Rogers claims workers’ compensation benefits from Pipeline for a work injury that occurred on December 30, 2002. Judge La Jeunesse held an evidentiary hearing and later issued a preliminary order for permanent total disability compensation at a weekly rate of \$461. Judge La Jeunesse based this award after findings Mr. Rogers worked 40 hours a week at \$11.92 an hour, for a total weekly rate of pay of \$691.36.

Pipeline then filed a motion for review of this decision with the Commission, asking the Commission to reverse Judge La Jeunesse’s finding that Mr. Rogers was entitled to permanent total disability compensation. Citing, in part, to LPI Services v. Labor Commission, 173 P.3d 858 (Utah Ct. App. 2007), the Commission affirmed Judge La Jeunesse’s order for permanent total disability. However, the Commission modified the weekly compensation rate to \$318 per week, assuming that Judge La Jeunesse made a mathematical error in calculating Mr. Rogers’ weekly rate of pay, which, at \$11.92 an hour for 40 hours a week, would have only totaled \$477 in weekly wages.

Mr. Rogers now asks the Commission to reconsider its findings and order of \$318 in weekly permanent total disability compensation. Mr. Rogers asserts that the parties stipulated at the hearing what the appropriate compensation would be. However, Mr. Rogers was not certain whether the stipulation was that Mr. Rogers would receive the benefit rate that Pipeline had previously been paying (\$562) or that it would be based on his claim in his application that he was working 58-60 hours a week at \$11.92 an hour. Mr. Rogers now contends that if the Commission finds he worked

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58-60 hours a week, then his award needs to take into consideration overtime pay, which, at a minimum, would have totaled \$798.64 in weekly compensation, thus qualifying him for the maximum weekly compensation rate of \$478. Pipeline also filed a motion for reconsideration, asking the Commission to wait until after the Utah Supreme Court enters its decision in LPI Services to reconsider its decision.

DISCUSSION

The Commission has reviewed the hearing record and finds that, although the parties stipulated that Mr. Rogers' hourly rate of pay was \$11.92 an hour, no stipulation was made as to Mr. Rogers' average weekly hours worked. Mr. Rogers' undisputed testimony, however, was that he worked an average of 58 hours, as supported by his application for benefits. Pipeline initially reserved the right to verify this amount in its answer to Mr. Rogers' application, but during the hearing did not dispute this claim or present contrary evidence. Thus, the Commission finds that Mr. Rogers' average weekly wage at the time of the accident was \$691.36, based on working 58 hours a week at \$11.92 an hour, which qualifies Mr. Rogers for permanent total disability compensation at \$461 a week. The Commission recognizes that this weekly award for benefits is the same amount that Judge La Jeunesse initially awarded in his order and therefore the Commission modifies only Judge La Jeunesse's finding of fact to reflect that Mr. Rogers worked 58 hours a week, instead of 40 hours a week. Judge La Jeunesse's order for benefits does not require any modification because it was determined at the proper weekly permanent total disability rate of compensation of \$461. Therefore, in summary, the Commission reinstates Judge La Jeunesse's order based on the finding of fact that Mr. Rogers had been working 58 hours a week for \$11.92 an hour,.

The Commission notes Mr. Rogers' new claim, in his motion for reconsideration, that Judge La Jeunesse's order was wrong because it failed to consider overtime pay in his weekly compensation rate. However, Mr. Rogers failed to properly file a motion for review of that order and is now precluded from arguing this new issue on a motion for reconsideration. Further, the evidentiary record is absent any claim that his weekly compensation included overtime or a description as to how such overtime was compensated by the company, except in his motion for reconsideration. Thus the Commission declines to further consider this request.

Finally, the Commission reviews Pipeline's request to reconsider its decision after the Utah Supreme Court rules on the appeal in the matter of LPI Services v. Labor Commission, 173 P.3d 858 (Utah Ct. App. 2007). The Commission recognizes that the Utah Supreme Court is reviewing this case but cannot anticipate when the Court will issue its decision. The Commission declines to stay Mr. Rogers' claim, which was initially filed on September 6, 2005, any longer and denies Pipeline's request to delay this final order.

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The Commission hereby reaffirms Judge La Jeunesse's preliminary order for permanent total disability compensation at the weekly rate of \$461, and remands the matter to the Adjudication Division for further proceedings as necessary to conclude the adjudication of Mr. Rogers' claim for permanent total disability benefits. It is so ordered.

Dated this 30th day of January, 2009.

Sherrie Hayashi
Utah Labor Commissioner

NOTICE OF APPEAL RIGHTS

Any party may appeal this Order to the Utah Court of Appeals by filing a Petition For Review with that Court within 30 days of the date of this Order.